

STATE OF MICHIGAN
COURT OF APPEALS

ALPHONSE LEWIS, JR. and RICARRDO L.
RASPBERRY,

UNPUBLISHED
May 18, 2010

Plaintiffs-Appellees,

v

AMERICA E. NELSON,

No. 287389
Lake Circuit Court
LC No. 08-007305-CH

Defendant-Appellant.

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

This property case arose when plaintiffs sought to quiet title to property previously owned by defendant. Plaintiff Lewis¹ purportedly obtained this property in a sheriff's sale in accordance with a judgment lien against defendant as the judgment debtor. When defendant failed to attend the pretrial conference, a default judgment was entered in plaintiffs' favor. Defendant appeals by right the trial court's denial of her motion to set aside the default judgment. We affirm.

We review a trial court's decision on a motion to set aside a default judgment for a clear abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 628; 750 NW2d 228, lv den 481 Mich 916 (2008). An abuse of discretion occurs when the trial court's decision results in an outcome falling outside the range of principled outcomes. *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

A motion to set aside a default judgment may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1); *Saffian v Simmons*, 477 Mich 8, 14; 727 NW2d 132 (2007). The moving party has the burden of proof. *Id.* at 15.

¹ Plaintiff Lewis is deceased, and there has been no personal representative substituted in his stead; consequently, he is dismissed as a party to this appeal.

Here, defendant filed a motion to set aside the judgment based on the allegation that she did not receive notice of the hearing. Defendant asserted that she was at a scheduled doctor appointment at the time of the hearing and that she could get whatever corroboration the court needed. These appear to us to be two separate allegations. She did not, however, file an affidavit with her motion or provide any evidence that she either did not receive notice or was unable to attend because of her medical situation, either of which might have been deemed adequate to show good cause. See MCR2.603(D)(1).

Secondly, whether a party has made a sufficient showing of good cause and of a meritorious defense are discrete inquiries. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 232-233; 600 NW2d 638 (1999). Good cause can be shown by either a substantial procedural defect or a reasonable excuse for the failure to comply with requirements that created the default. *Id.* at 233.

Although defendant claimed that there must have been a procedural defect that prevented her from getting the notice of hearing, she did not provide any proof, including her own sworn testimony, to substantiate her reasons for not attending the pretrial conference. Instead, defendant simply informed the court that she was at a scheduled cardiologist appointment; consequently, she failed to meet the first requirement of MCR 2,603(D)(1) that she show good cause to set aside the default.

Defendant also argues that the trial court improperly found that consideration of previous lawsuits, which led to the execution sale, was barred based on res judicata. Defendant cites no legal authority for her position and therefore has abandoned this issue on appeal. An appellant may not merely announce a position and leave it up to this Court to discover the basis for the argument. *DeGeorge v Warheit*, 276 Mich App 587, 594-595; 741 NW2d 384 (2007).

On appeal, defendant belatedly addresses the substantive merits of her claim. The trial court, however, never reached these issues. Defendant was required to file an affidavit of facts showing a meritorious defense. MCR2.603(D)(1). She did not do so. Issues not addressed by the trial court are not properly before this Court. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003).

“Although the law favors a determination of a claim on the basis of its merits, the policy of this state is generally against setting aside defaults and default judgments that have been properly entered.” *ISB Sales Co v Dave’s Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). The trial court did not abuse its discretion because its denial of defendant’s motion to set aside the judgment was within the range of principled outcomes. See *Barnett*, 478 Mich at 158.

We affirm. As the prevailing parties, plaintiffs may tax costs. MCR 7.219.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher